

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

GLENN S. MORRISON, DO.,

Plaintiff,

V.

STATE OF WASHINGTON;
DEPARTMENT OF SOCIAL AND
HEALTH SERVICES; DEPARTMENT OF
HEALTH; DAVID HOLT, COE WESTERN
STATE HOSPITAL; KATHERINE
RAYMER, DANIEL RUIZ PAREDES,
TODD M. TERHAAR, DOH HEALTH
CASE INVESTIGATOR III; CITY OF
TACOMA and JENNIFER TERHAAR.

Defendants.

This matter comes before the Court on Defendants David Holt, Katherine Raymer, and Daniel Ruiz Paredes' Motion for Summary Judgment (Dkt. # 39) and Defendant Todd Terhaar's Motion for Summary Judgment (Dkt. # 43). Having considered the submission in support of and in opposition to the motions, the applicable law, and the case file, the Court DENIES Defendants' motions without prejudice on Rule 56(d) grounds.

Plaintiff brings various causes of action against Defendants, alleging that they retaliated against him during his employment at Western State Hospital. Dkt. # 1-1. Defendants have

1 moved for summary judgment in two separate motions, seeking dismissal of all claims against
 2 them. *See* Dkts. ## 39, 43. In his Responses to Defendants' motions, Plaintiff sought relief
 3 under Federal Rule of Civil Procedure 56(d), claiming discovery was not complete and
 4 depositions of key witnesses had not been taken. *See* Dkt. # 49 at 6–7; Dkt. # 55 at 8–10.

5 Under Federal Rule of Civil Procedure 56(d), if the nonmoving party "shows by affidavit
 6 or declaration that, for specified reasons, it cannot present facts essential to justify its opposition,
 7 a court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or
 8 declarations or to take discovery; or (3) issue any other appropriate order." Fed. R. Civ. P. 56(d).
 9 To prevail on a Rule 56(d) motion, the party opposing summary judgment "must make '(a) a
 10 timely application which (b) specifically identifies (c) relevant information, (d) where there is
 11 some basis for believing that the information sought actually exists.'" *Emps. Teamsters Loc.*
 12 *Nos. 175 & 505 Pension Tr. Fund v. Clorox Co.*, 353 F.3d 1125, 1129 (9th Cir. 2004) (*quoting*
 13 *VISA Int'l Serv. Ass'n v. Bankcard Holders of Am.*, 784 F.2d 1472, 1475 (9th Cir.1986)).
 14 Moreover, unless the party requesting a continuance "has not diligently pursued discovery of the
 15 evidence," their request "should be granted almost as a matter of course." *Burlington N. Santa*
 16 *Fe R.R. Co. v. The Assiniboine & Sioux Tribes of the Fort Peck Reservation*, 323 F.3d 767, 773-
 17 74 (9th Cir. 2003) (internal quotation marks and citations omitted).

18 As Plaintiff sets forth in declarations from his counsel, additional time for discovery is
 19 needed to depose all the moving Defendants (Holt, Raymer, Ruiz Paredes, and Terhaar) and
 20 other key witnesses. Dkt. # 56 at 1–2; Dkt. # 57 at 1–2. Plaintiff also asserts that these
 21 depositions have not been scheduled because they would be most useful if sequenced after all
 22 responsive documents have been produced. Dkt. # 56 at 2–3; Dkt. # 57 at 2–3. In opposition,
 23 Defendants argue that Rule 56(d) relief is not warranted because the discovery Plaintiff claims to

1 need would not support his claims, and because Plaintiff has not diligently pursued discovery in
 2 this matter. *See Dkt. # 64 at 8; Dkt. # 66 at 4–5.*

3 The information Plaintiff seeks is sufficiently identified, plainly relevant to his claims,
 4 and likely to be obtained from his discovery targets. *See Emps. Teamsters*, 353 F.3d at 1129.
 5 For instance, Plaintiff wishes to depose Defendants Holt, Raymer, Ruiz Paredes and Terhaar
 6 about, among other topics, whether they conspired together to retaliate against Plaintiff for
 7 speaking out on matters of public concern, whether they unlawfully disclosed Plaintiff's
 8 confidential information, and whether they treated Plaintiff differently compared to others to
 9 inflict emotional or financial injury. *See Dkt. # 56 at 3; Dkt. # 57 at 3.* Because discriminatory
 10 or retaliatory intent can be an elusive factual determination, summary judgment before the
 11 named Defendants are deposed would be inappropriate. *See Yartzoff v. Thomas*, 809 F.2d 1371,
 12 1377 (9th Cir. 1987). Also, the parties have litigated several discovery disputes, including a
 13 motion to compel filed by Plaintiff that was denied without prejudice based on Defendants'
 14 promise to produce certain documents. *See Dkt. # 45.* Plaintiff represents that only some of
 15 these documents were produced, and those that were arrived too close to their Response deadline
 16 to incorporate them into their briefing. Dkt. # 49 at 49 at 7; Dkt. # 55 at 9. As with the
 17 depositions of named Defendants and key witnesses, Plaintiff should be able to incorporate the
 18 information from these documents into their briefing, subject to any further rulings on discovery
 19 by the Court.

20 And the Court does not find that Plaintiff has been dilatory in his discovery efforts.
 21 Although Plaintiff apparently did not take any depositions of the named Defendants before filing
 22 their briefs, discovery at that point remained open for several more months. And Plaintiff asserts
 23 that he cannot conduct these depositions until Defendants willingly produce or are compelled to
 24 produce certain documents. Dkt. # 56 at 2–3; Dkt. # 57 at 2–3. The benefits of sequencing

1 discovery in that way are plain and the Court concludes that Plaintiff's approach is reasonable
2 here. Apparently, there has not been much time for Plaintiff to carry out that approach, however,
3 because Defendants continue to object to Plaintiff's interrogatories and requests for production
4 without producing responsive information or documents. *See, e.g.*, Dkt. # 62.

5 Because Plaintiff has made a timely request relief under Rule 56(d) that identifies with
6 sufficient specificity relevant information he seeks more time to pursue, and because Plaintiff has
7 not been unduly dilatory in his efforts to obtain discovery in this matter, the Court concludes that
8 relief under Rule 56(d) is warranted. *See Emps. Teamsters*, 353 F.3d at 1129. Once Plaintiff has
9 had a reasonable opportunity to complete document discovery and depose witnesses, Defendants
10 may again move for summary judgment.

11 Accordingly, the Court DENIES Defendants' motions for summary judgment without
12 prejudice to refiling after the close of discovery. The Court acknowledges that discovery closes
13 in less than a week and that several discovery disputes are ongoing. The parties should notify the
14 Court if they will need a modification to the case schedule to accommodate additional discovery.

15 Dated this 17th day of November, 2022.

16
17 

18 John H. Chun
19 United States District Judge
20
21
22
23
24